



Judgment dated 19.09.2023 in
C.M.A.Nos.1419 to 1422 of 2018
and Cross Objection Nos.20 to 23 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.Nos.1419 to 1422 of 2018
and
C.M.P.No.11350 to 11353 of 2018
and
Cross Objection Nos.20 to 23 of 2023

M/s.Cholamandalam General Insurance
Company Ltd.,
I Floor, No.9, Rajaji Road,
Peramanur,
Salem-7.

.. Appellant in all the appeals and cross objections

Vs.

- | | |
|--|--|
| 1. Thiru.Chandran, son of Palani | .. first respondent in C.M.A.1419 of 2018 |
| 1. Thiru.A.Mani, son of Arumugam | .. first respondent in C.M.A.1420 of 2018 |
| 1. Thiru.S.Appukutti, son of Seman | .. first respondent in C.M.A.1421 of 2018 |
| 1. Thiru.A.Arumugam | .. first respondent in C.M.A.No.1422 of 2018 |
| 2. Tmt.Amutha, wife of Arumugham .. Second respondent in all C.M.As. | |



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|---------------------------|---|
| A.Mani, son of Arumugam | .. Cross Objector in Cross.Obj.20 of 2023 |
| Appukkutti, son of Seeman | .. Cross Objector in Cross.Obj.21 of 2023 |
| Chandran, son of Palani | .. Cross Objector in Cross.Obj.22 of 2023 |
| Arumugam, son of Angappan | .. Cross Objector in Cross.Obj.23 of 2023 |
-
1. Tmt.Amudha, wife of Arumugam
.. first respondent in all Cross Objections

 2. M/s.Cholamandalam General
Insurance Company Ltd.,
1st Floor, No.9, Rajaji Road,
Peramanur, Salem.
.. Second respondent in all Cross Objections

Civil Miscellaneous Appeal No.1419 of 2018 filed under Section 30 of the Employees' Compensation Act, 1923, against the final Award dated 30.08.2017 (received on 11.10.2017), in E.C.No.90 of 2016 on the file of the Commissioner for Employees' Compensation (Deputy Commissioner of Labour), Salem.

Civil Miscellaneous Appeal No.1420 of 2018 filed under Section 30 of the Employees' Compensation Act, 1923, against the final Award dated 30.08.2017 (received on 11.10.2017), in E.C.No.94 of 2016 on the file of the Commissioner for Employees' Compensation (Deputy Commissioner of Labour), Salem.



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Civil Miscellaneous Appeal No.1421 of 2018 filed under Section 30 of the Employees' Compensation Act, 1923, against the final Award dated 30.08.2017 (received on 11.10.2017), in E.C.No.95 of 2016 on the file of the Commissioner for Employees' Compensation (Deputy Commissioner of Labour), Salem.

Civil Miscellaneous Appeal No.1422 of 2018 filed under Section 30 of the Employees' Compensation Act, 1923, against the final Award dated 30.08.2017 (received on 11.10.2017) in E.C.No.98 of 2016 on the file of the Employees' Compensation (Deputy Commissioner of Labour), Salem.

Cross Objection No.20 of 2023 filed under Order XLI Rule 22 of the Code of Civil Procedure, against the order dated 30.08.2017 in W.C.No.94 of 2016 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

Cross Objection No.21 of 2023 filed under Order XLI Rule 22 of the Code of Civil Procedure, against the order dated 30.08.2017 in W.C.No.95 of 2016 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

Cross Objection No.22 of 2023 filed under Order XLI Rule 22 of the Code of Civil Procedure, against the order dated 30.08.2017 in W.C.No.90 of 2016 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

Cross Objection 23 of 2023 filed under Order XLI Rule 22 of the Code of



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Civil Procedure, against the order dated 30.08.2017 in W.C.No.98 of 2016 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

For appellant in all C.M.As. : Mr.J.Michael Visuvasam
For first respondent in all C.M.As. : M/s.C.Thangaraj
For second respondent in all C.M.As.: No appearance
For cross objector in all Cross.Obj: Mr.S.Sankar for M/s.C.Thangaraj
For first respondent in all Cross.Obj: No appearance
For second respondent in all Cross.Obj: Mr.J.Michael Visuvasam

COMMON JUDGMENT

The claimants have filed the claim petitions before the Commissioner for Employees' Compensation claiming compensation for the injuries sustained by them during the course of employment. The Commissioner, while considering the facts, fixed the quantum of compensation, against which the Insurance Company has preferred these appeals.

2. For the purpose of convenience, the parties are referred to as per their rank before the authority below.



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3. Since the facts in all these case are one and the same, it is enough to narrate the facts as in E.C.No.90 of 2016 (pertaining to claimant P.Chandran).

4. The claimant-P.Chandran was a workman, i.e. load-man under the second respondent (Amutha). The Eicher Van, bearing Registration No.TN-57-V-1467 belonging to her even at the time of accident and the claimant was only a load-man. On 06.02.2016 at about 10.30 a.m., the applicant-Chandran was working as a load-man in Eicher Van bearing Registration No.TN-57-V-1467 which is owned by the said A.Amutha. The claimant-P.Chandran and five other load-men were loading the cement pillar inside the Van and proceeding to Kollampalayam 19 Road near Sennappanaickenpalayam Bus Stop, towards South to North direction and at that time, a Cow crossed the road in front side of the vehicle and its driver was driving the vehicle in a rash and negligent manner, without following the traffic Rules and suddenly, he applied brake and the cement pillars went upside to the claimant and the other load-men and caused the accident.

5. The Insurance Company resisted the petitions before the Labour Court by filing counter. The main attack is that the applicant-Chandran is not at all workman under the employment of the second respondent-Amutha. The



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claimant-Chandran lodged a complaint before the Modakurichi Police stating that on 06.02.2016 at about 7.30 a.m., one Murugan, who is well acquainted with the claimant-Chandran, called the claimant to come to Narayana Valasu along with four persons to load cement Pillars on Eicher van and on the basis of the above communication, the claimant-Chandran went to Narayanavalasu along with four persons where the said Murugan was standing at a Tea shop and he informed the claimant-Chandran that there were 47 cement pillars at Sennappanaickenpalayam and the claimant and the said Murugan fixed the charge for loading the pillars and then the claimant-Chandran and other four persons went to Sennappanaickenpalayam and loaded the pillars on the Eicher Van and then they boarded the vehicle to return to their home and on the way, they have met with the accident.

6. It is the further averment of the Insurance Company in their counter that on a perusal of the FIR, it could be inferred that the claimant-Chandran was not an employee under the second respondent-Amutha on the date of the alleged accident. The claimant-Chandran was engaged by the said Murugan to load the cement pillar on the vehicle. It is their further counter that from the FIR, it is clear that the claimant-Chandran was engaged by the said Murugan as a casual labourer, but not by the second respondent-Amutha and it is also known



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that the claimant-Chandran was not employed for the purpose of employer's business by the employer. Thus, according to the Insurance Company, there is no employer-employee relationship between the claimant-Chandran and the second respondent-Amutha.

7. The authority below, had considered the materials available on record and passed the Final Award granting a sum of Rs.4,30,054/- with interest @ 12% per annum (in E.C.No.90 of 2016), with similar Awards varying in the amount of compensation, in the remaining three cases.

8. Challenging the said final Award of the authority below, the Insurance Company had filed the present appeals and the claimants have preferred the Cross Objections herein.

9. Learned counsel appearing for the Insurance Company submitted that even from their own records like FIR, etc., it is clear that the claimants were engaged by one Jagadeesan through one Murugan and they have not proved the fact contra to the FIR that they were engaged by the owner of the offending vehicle. The R.C. Book shows that the second respondent/Amutha was the owner of the vehicle. The said Amutha never engaged the claimant and they



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have never worked as load-men under the said Amutha through the insured Jagadeesan and they have not produced any materials and the FIR is the first document in which they have clearly stated that one Murugan informed to the claimant(s) that one Jagadeesan called them for loading and unloading the posts and only they went to instruct the place and after loading that, they went along with the goods. They are supposed to have travelled only as per the seating arrangement. Even more than seven persons travelled including the driver in the vehicle. They have travelled in the body of the vehicle and due to that, there was a fall of the posts (pillar/pole), resulting in their sustaining injuries. They are not supposed to travel along with the goods in the body of the vehicle and the Insurance is only for the vehicle and not to the employee of the hirer. The said Jagadeesan was the owner of the goods, but he had concealed the vehicle and he engaged the claimant for loading and unloading.

10. Learned counsel for the Insurance Company further submitted that when once they rely on the FIR, they cannot take it only for limited purpose which is favourable to them and they cannot say that the other contents of the FIR would not bind them.

11. In support of his submissions, the learned counsel for the appellant



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placed reliance on the judgments of the Honourable Supreme Court reported in 2007 ACJ 1928 (SC) (Oriental Insurance Co. Ltd. Vs. Premlata Shukla) and 2013 (1) TN MAC 15 (SC) (Sanjeev Kumar Samrat Vs. National Insurance Company Ltd). The above decisions of the Supreme Court were relied on for the proposition that if the hirer engaged an employee for loading and unloading, the insurer is not liable to pay the compensation.

12. Learned counsel for the Insurance Company further submitted that even under Section 174 of the Motor Vehicles Act, the Insurance Company is not liable to pay the compensation, since they are not employee of the insured vehicle and they have not produced any material to show that they were the employee of the insured and the Insurance is covered to them also.

13. It is further submitted that as far as the quantum of compensation is concerned, the authority below has, without application of mind, had accepted the disability certificate given by the Doctor and they just reduced only 2% of the disability assessment. The authority below has not given any valuable reason for accepting the disability given by the Doctor and the nature of the injuries and the percentage of the disability given by the Doctor, are not proportionate to the injuries sustained by the claimant.



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14. Therefore, according to the learned counsel for the Insurance Company, in order to get more compensation, the Medical Officer has boosted up the percentage of disability and the authority below has also not considered the same. He has taken as it is by reducing 2% of the disability fixed by the Medical Officer. Therefore, the same is to be set aside.

15. Learned counsel for the Insurance Company further submitted that all the trouble was caused due to the fall of the 'post' and the claimants had sustained injuries and if they have not travelled in the body of the vehicle, they would not have sustained the injuries, and therefore, only the injuries sustained was only due to their own negligence, for which the insurer need not compensate the loss caused by the claimant. Therefore, viewed from any angle, all the claimants relied on the FIR, and the authority below has also relied on the FIR, but his decision is contra to that and therefore, the claimants are estopped from raising the plea against the contents mentioned in the FIR and they cannot rely on the FIR and one person cannot ignore the other person and therefore, under those circumstances, the appellant/Insurance Company is not liable to pay the compensation.

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16. Learned counsel appearing for the claimants submitted that in the claim petitions, the claim is for the appeal and the cross objection that they were all working as only employees under the owner of the offending vehicle and they have issued all the statutory notices, but though they have acknowledged the said notices, the employer has not denied the employment and also the employer-employee jural relationship between the claimant and the employee.

17. Learned counsel for the claimants further submitted that the claimants had sustained fracture on the legs and that all were doing the loading and unloading work, and therefore, the compensation granted by the authority below is very low. The learned counsel also submitted that the authority below has fixed only notional income of Rs.8,000/-, which is below the minimum wage index during the relevant period, and therefore, the compensation has to be enhanced.

18. Heard both sides and perused the materials available on record

19. Admittedly, the claimants, while travelling in the goods vehicle, sustained injuries. One of the claimants, i.e. in C.M.A.No.1420 of 2018, A.Mani, is the author of the FIR and he has clearly stated that one Murugan informed them

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that the investigating officer asked to arrange four persons for loading and unloading of the 'post' and therefore, as per the instructions of the said Murugan, they went to the place of work and other persons also joined them and they went to loading the posts/pillars in the offending vehicle. After loading the post/pillar, they have travelled along with the post/pillar and due to rash and negligent driving of the driver of the offending vehicle, all the posts/poles/pillars fell below the hip of the claimants and they have sustained injuries.

20. Subsequently, they have been admitted in the hospital for treatment. Therefore, though in the FIR, one of the claimants in the present appeals, stated that as per the instructions of the said Jagadeesan, the said Murugan informed and therefore, they went and due to the capsizing of the vehicle, the post/pole fell down on their legs and they have sustained injuries.

21. In the FIR, they have not specifically stated as to whether the owner of the offending vehicle engaged them and they are only the load-men, but they have stated as per the FIR that as per the instructions given by the said Jagadeesan, they have gone there and after loading the post, they went to the destination for unloading and they have sustained the injuries. It is to be noted that it is not a written complaint and the complaint was written only by the Police



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officials as per the statement given by Mani, the claimant in C.M.A.No1420 of 2018.

22. It is settled proposition of law that the FIR is not Encyclopaedia. Though the learned counsel for the appellant/Insurance Company submitted that the FIR cannot be relied only for the part of the contents and they cannot ignore the remaining part of the contents. But however, the fact remains that there is no written complaint given by any of the complainants or claimants in these appeals.

23. In the above circumstances, they have filed the claim petitions under the provisions of the Employees' Compensation Act before the authority below (Commissioner for Workmen's compensation), which requires a pre-condition notice. The employee or the injured has to fail or depend on the case of fatal and they have to give statutory notice to the employer and thereafter, they can file the claim petition, whereas, in this case, the claimants have failed to issue notice to the employer, namely one Amutha, who is the registered owner of the offending vehicle. The said Amutha also acknowledged the said notice which happened within one month as per the statutory provisions of law. But no reply was given by the second respondent/Amutha, who was the registered owner of



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the offending vehicle and did not appear. The said Amutha has not denied that the claimants are not their employees and have not engaged the claimants as load-men of the vehicle.

24. It is settled position of law that the FIR is not the Encyclopaedia. It can be taken into account even for the limited purpose. Even the claimants were not in a position to see anything about the criminal case said to have been registered.

25. It is seen that the employee issued statutory notice to the employer and after receipt of the notice, the employer has not denied the jural relationship of employer-employee. Admittedly, the said Amuthua insured the offending vehicle with the appellant/Insurance Company and the appellant is the insurer and Amutha is the insured.

26. There is no contra evidence to prove that the said Amutha is not the owner of the vehicle and the vehicle is not insured with the appellant/Insurance Company. The claimants were not directly employed under the said Amutha and therefore, even in the absence of any reply to the statutory notice or the counter affidavit filed by the owner of the vehicle, it is for the employer to prove that the



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accident was not arising out and in the course of employment and the claimants have not sustained injuries during the course of employment. In the circumstances, the injured sustained injury only during the course of employment and it is not in dispute and it is also admitted.

27. It is also admitted that the claimants have also sustained injuries and they had sustained injuries only during the course of employment and it is not in dispute and it is also admitted.

28. The only dispute is as to whether all the claimants were working as load-men under the said Amutha, being the owner of the vehicle. The claimants were not employed under the said Amutha and therefore, even in the absence of any reply to the statutory notice or counter affidavit by the owner of the vehicle, it is for the insurer to prove that the accident was not arising out of and in the course of employment and that the claimants have not sustained injuries during the course of employment.

29. Therefore, in the above circumstances, the injured sustained injuries only during the course of employment and it is not in dispute and the same is admitted. They have sustained injuries is also admitted.



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30. The only dispute is as to whether all the claimants were working as load-men under the said Amutha being the owner of the vehicle.

31. All the claimants were directly under the control of the said Jagadeesan. In this case, except the FIR, no other material is produced to show that the respondents/claimants were engaged by only the said Jagadeesan and they were under the employment of the said Jagadeesan.

32. The statutory notice was issued by the claimants to the owner of the offending vehicle, i.e. Amutha. It is admittedly the insurer/appellant/Insurance Company, which has to compensate the loss and in the absence of the said Amutha, the appellant would have summoned the driver of the offending vehicle or the said Amutha or even the said Jagadeesan or the said Murugan. Though the claimants have to prove that only under the Workmen's Compensation Act, the claimants have to prove only two aspects, one is employer-employee relationship and whether the injuries were sustained during the course of employment.

33. Admittedly, in this case, the injuries sustained by the claimants were

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only during the course of employment. The claimants have clearly stated in the statutory notice that they were engaged as load-men by the said Amutha and there is no contra evidence and therefore, in these circumstances, the said Amutha has not denied the employer-employee jural relationship between the claimants and the second respondent/Amutha, and the authority below has rightly found that the claimants were employees under the second respondent-Amutha.

34. Admittedly, the offending vehicle is in the name of the Amutha, and the name of the said Amutha is shown as the registered owner as per the RC Book of the offending vehicle. Therefore, the injuries sustained during the course of employment, in the absence of any denial of employer-employee relationship, and in the absence of giving any reply and denial, this Court is of the view that the accident has arisen only during the course of employment and the respondents/claimants were engaged by the said Amutha and she is the owner of the offending vehicle, and she is the employer and the claimants are the employees.

35. During the course of accident, the offending vehicle was insured with the appellant and therefore, the said Amutha is the insured and the appellant is



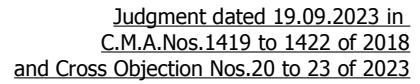
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the insurer and when any loss is sustained by the insured, the insurer is liable to be compensated the loss caused to the employees of the employer. Therefore, in the circumstances, this Court does not find any perversity in appreciation of the evidence.

36. The decisions of the Supreme Court relied on by the learned counsel for the appellants, are not applicable to the present case on hand, and they are distinguishable on facts.

37. In the above facts and circumstances, it is clear that the employees / claimants were engaged by the hirer of the vehicle and whereas, in this case, the statutory notice clearly shows that the claimants were load-men working under the said Amutha and the vehicle in question belongs to the said Amutha being the second respondent herein. Hence, the vehicle in question was insured with the appellant/Insurance Company and the appellant is liable to pay the compensation.

38. It is further submitted by the learned counsel for the appellant/Insurance Company that the owner has violated the Policy conditions and they are not also supposed to employ any driver. In this case, admittedly, the



39. Therefore, in the above circumstances, admittedly, more than the permitted seating persons were allowed to travel as a load-men. Even if it is the load-men within the seating capacity, only they have come to be allowed to travel in the vehicle.

40. From the evidence available on record in this case, it is seen that they have been allowed to travel more than the permitted persons. Therefore, if there is any violation of the policy conditions, the Insurance Company is not liable to pay the compensation to the claimants and the same can be recovered from the owner of the vehicle, namely the said Amutha.

41. As far as the quantum of compensation is concerned, the claimants have examined the Doctor who had issued the disability certificate, which was also marked as exhibit before the authority below. Therefore, admittedly, all the



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claimants sustained injuries on their legs, i.e. below the hip due to fall of the post and they have also sustained grievous injuries like fracture.

42. Considering the fact that the claimants were all load-men and they have sustained injuries on their leg, and grievous injury like fracture, had also been suffered by the load-men and after this accident, they could not perform the work in the same way, as they were doing before the accident.

43. Therefore, considering the evidence of the Doctor and the disability certificate, this Court does not find any perversity in the fixation of the disability fixed by the authority below.

44. Thus, considering the facts and circumstances of the case, and as it is only the Workmen's Compensation Act, (now called as -- Employees' Compensation Act), this Court, being the appellate Court, as a final Court of finding of facts, can always re-appreciate the entire evidence and considering the same, this Court also finds that the claimants were travelling in the vehicle only as load-men and who were the employees of the owner of the vehicle and the accident had occurred only due to the rash and negligence driving of the driver and the injuries were sustained only "during the course of employment".



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45. Therefore, it is seen that at the relevant point of time, the offending vehicle was insured with the appellant/Insurance Company. The appellant/Insurance Company is liable to compensate the loss suffered by the claimants.

46. Therefore, in order to indemnify the loss caused by the injured, there is no merit in these appeals and the same are liable to be dismissed.

47. This Court also finds that there is violation of the Insurance Policy conditions and therefore, "pay and recovery" clause is ordered and the appellant/Insurance Company is directed to pay the entire compensation at the first instance to the claimants and thereafter, they shall recover the same from the owner of the vehicle.

48. The appellant/Insurance Company is directed to pay the compensation at the first instance and they can recover the same from the insured being the second respondent, and since it is statutory compensation, they have to follow the pre-condition for payment of compensation. They have to deposit the entire amount, and if already deposited, and the claimants have withdrawn or



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permitted to withdraw the claim amount if not already deposited.

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49. For the foregoing reasonings, these appeals are dismissed. There shall be no order as to costs. Consequently, C.M.P.Nos.11350 to 11353 of 2018 are closed.

50. In view of the dismissal of the appeals as above, this Court does not find that there is any other reason to enhance the compensation awarded by the authority below. Therefore, for the very same reasons stated above, the Cross Objections shall also stand dismissed. There shall be no order as to costs.

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CS

To

1. The Commissioner for Employees' Compensation
(Deputy Commissioner of Labour), Salem.
2. The Section Officer, V.R.Section, High Court, Madras.

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